

AMENDED IN ASSEMBLY APRIL 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1792**

**Introduced by Assembly Member Yee**

**(Principal coauthor: Assembly Member Runner)**

**(Principal coauthors: Assembly Members Lieber, Montanez, and  
Runner)**

**(Coauthors: Assembly Members Koretz, Lieber, Mullin, and  
Vargas)**

**(Coauthor: Senator Kuehl)**

January 5, 2004

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~~An act to amend Section 313 of the Penal Code, relating to video. An~~  
*act to add Title 1.25 (commencing with Section 1746) to Part 4 of*  
*Division 3 of the Civil Code, relating to video games.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1792, as amended, Yee. ~~Harmful matter.~~ *Violent* video games.

Existing law ~~sets forth various crimes relating to the distribution or~~  
~~exhibition~~ *prohibits the distribution* of harmful matter, as defined, to  
minors. Existing law defines harmful matter with reference to, among  
other things, its appeal to the prurient interest and its depiction of sexual  
conduct.

This bill would set forth legislative findings and declarations  
regarding the harmful effects of violent video games on minors. It  
would ~~include within the definition of harmful matter~~ *prohibit a person*  
*from knowingly distributing or exhibiting to a minor* any video game  
that appeals to minors' morbid interest in violence, that enables the  
player to virtually inflict serious injury upon human beings or

characters with substantially human characteristics in a manner that is especially heinous, atrocious, or cruel, as defined, and that lacks serious literary, artistic, political, or scientific value for minors. The bill would exclude from this ~~definition~~ *prohibition* any game in which the visual depiction of violence occurs as the result of simultaneous competition between 2 or more players, *as specified*. ~~By expanding the definition of harmful matter, the bill would expand the scope of an existing crime and would thereby impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: ~~yes~~ *no*.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares the
- 2 following:
- 3 (a) The exposure of minors to depictions of violence in
- 4 entertainment media has increased dramatically with the
- 5 development of violent video games.
- 6 (b) The number of serious violent incidents committed by
- 7 minors has increased since the development of these games.
- 8 (c) Minors are more likely than adults to be influenced by
- 9 violent video games and to commit acts of violence as a result.
- 10 (d) Even minors who do not commit acts of violence suffer
- 11 psychological harm from prolonged exposure to violent video
- 12 games.
- 13 (e) In July 2000, five national medical associations issued a
- 14 ‘Joint Statement on the Impact of Entertainment Violence on
- 15 Children,’ which concluded that viewing entertainment violence
- 16 leads to increases in aggressive attitudes, values, and behavior,
- 17 particularly in children.
- 18 (f) Violent video games have the capacity to produce more
- 19 serious psychological damage in minors than other forms of
- 20 violent entertainment because of the involvement of the player in



1 the infliction of injury and the satisfaction induced by these games  
2 from successfully performing violent acts.

3 (g) Many parents are unaware of the content of violent video  
4 games because they lack the ability to play them, making it  
5 difficult to screen them effectively. Moreover, current ratings  
6 systems do not adequately describe the extent and nature of the  
7 violence contained in many of these games.

8 ~~SEC. 2. Section 313 of the Penal Code is amended to read:~~

9 ~~313. As used in this chapter:~~

10 ~~(a) "Harmful matter" means either of the following:~~

11 ~~(1) Matter that, taken as a whole, to the average person,~~  
12 ~~applying contemporary statewide standards, appeals to the~~  
13 ~~prurient interest, that, taken as a whole, depicts or describes in a~~  
14 ~~patently offensive way sexual conduct and that, taken as a whole,~~  
15 ~~lacks serious literary, artistic, political, or scientific value for~~  
16 ~~minors.~~

17 ~~(A) When it appears from the nature of the matter or the~~  
18 ~~circumstances of its dissemination, distribution or exhibition that~~  
19 ~~it is designed for clearly defined deviant sexual groups, the appeal~~  
20 ~~of the matter shall be judged with reference to its intended~~  
21 ~~recipient group.~~

22 ~~(B) In prosecutions under this chapter, where circumstances of~~  
23 ~~production, presentation, sale, dissemination, distribution, or~~  
24 ~~publicity indicate that matter is being commercially exploited by~~  
25 ~~the defendant for the sake of its prurient appeal, that evidence is~~  
26 ~~probative with respect to the nature of the matter and can justify~~  
27 ~~the conclusion that the matter lacks serious literary, artistic,~~  
28 ~~political, or scientific value for minors.~~

29 ~~(2) Any~~

30 *SEC. 2. Title 1.25 (commencing with Section 1746) is added*  
31 *to Part 4 of Division 3 of the Civil Code, to read:*

32  
33 *TITLE 1.25. SALE OF VIDEO GAMES*  
34

35 *1746. (a) A person shall not, with knowledge that the person*  
36 *is a minor, knowingly sell, rent, distribute, send, cause to be sent,*  
37 *exhibit, or offer to distribute or exhibit by any means, any violent*  
38 *video game to a minor.*

39 *(b) For the purposes of this section, the following terms have*  
40 *the following meanings:*

1 (1) “Violent video game” means any video game or any copy  
2 of an electronic game that may be played using a portable  
3 electronic device or hand-held gaming device using a television or  
4 computer, that, taken as a whole, to the average person, applying  
5 contemporary statewide standards, appeals to minors’ morbid  
6 interest in violence, that enables the player to virtually inflict  
7 serious injury upon human beings or characters with substantially  
8 human characteristics in a manner that is especially heinous,  
9 atrocious, or cruel, and that, taken as a whole, lacks serious  
10 literary, artistic, political, or scientific value for minors.

11 (A) For the purposes of paragraph (1), a visual depiction of  
12 violence shall be deemed ‘especially heinous, atrocious, or cruel’  
13 if it contains each of the following elements:

14 (i) It depicts exceptional pain or suffering on the part of the  
15 victim and is accompanied by a graphic depiction of the victim’s  
16 injuries.

17 (ii) The violence is accomplished in the commission of acts that  
18 would be punishable as crimes.

19 (iii) The circumstances surrounding the violence indicate that  
20 it is committed without conscience, pity, or empathy.

21 (iv) It is accompanied by auditory or other sensory elements  
22 that serve to enhance the realism of the visual depiction.

23 (B) A game shall be deemed to contain a visual depiction of  
24 violence that is especially heinous, atrocious, or cruel if it is  
25 possible, within the range of options offered by the game, to create  
26 a depiction that contains the elements listed in subparagraph (A).

27 (C) This paragraph shall not apply to a game in which the visual  
28 depiction of violence occurs as a result of simultaneous  
29 competition between two or more players:

30 ~~(e) “Matter” means any book, magazine, newspaper, video~~  
31 ~~recording, video game, or other printed or written material or any~~  
32 ~~picture, drawing, photograph, motion picture, or other pictorial~~  
33 ~~representation or any statue or other figure, or any recording,~~  
34 ~~transcription, or mechanical, chemical, or electrical reproduction~~  
35 ~~or any other articles, equipment, machines, or materials. “Matter”~~  
36 ~~also includes live or recorded telephone messages when~~  
37 ~~transmitted, disseminated, or distributed as part of a commercial~~  
38 ~~transaction.~~

39 ~~(d) in which the game’s violence may be committed only against~~  
40 ~~characters or entities controlled by other players.~~

1 (2) “Person” means any individual, partnership, firm,  
2 association, corporation, limited liability company, or other legal  
3 entity.

4 ~~(e)~~

5 (3) “Distribute” means to transfer possession of, whether with  
6 or without consideration.

7 ~~(f)~~

8 (4) “Knowingly” means being aware of the character of the  
9 matter.

10 ~~(g)~~

11 (5) “Exhibit” means to show.

12 ~~(h)~~

13 (6) “Minor” means any natural person under 18 years of age.

14 ~~SEC. 3.—No reimbursement is required by this act pursuant to~~  
15 ~~Section 6 of Article XIII B of the California Constitution because~~  
16 ~~the only costs that may be incurred by a local agency or school~~  
17 ~~district will be incurred because this act creates a new crime or~~  
18 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
19 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
20 ~~the Government Code, or changes the definition of a crime within~~  
21 ~~the meaning of Section 6 of Article XIII B of the California~~  
22 ~~Constitution.~~

